



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 300**

**[Docket No. 160801681-6857-01]**

**RIN 0648-BG22**

**International Fisheries; Tuna and Tuna-like Species in the Eastern Pacific Ocean; Silky Shark Fishing Restrictions and Fish Aggregating Device Data Collection and Identification**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations under the Tuna Conventions Act to implement provisions of two Resolutions adopted by the Inter-American Tropical Tuna Commission (IATTC) in 2016: Resolution C-16-01 (*Collection and Analyses of Data On Fish-Aggregating Devices*) and Resolution C-16-06 (*Conservation Measures for Shark Species, with Special Emphasis on the Silky Shark (Carcharhinus Falciformis) for the Years 2017, 2018, and 2019*). Per Resolution C-16-01, these regulations would require the owner or operator of a U.S. purse seine vessel to ensure characters of a unique code be marked indelibly on each fish aggregating device (FAD) deployed or modified on or after January 1, 2017, in the IATTC Convention Area. The vessel owner or operator would also be required to record and submit information about the FAD, as described in Annex I of the Resolution C-16-01. Per Resolution C-16-06, these regulations would prohibit the owner or operator of a U.S. purse seine vessel from retaining on board, transshipping, landing, or storing, in part or whole, carcasses of silky sharks caught by

purse-seine vessels in the IATTC Convention Area. These regulations would also provide limits on the retained catch of silky sharks caught in the IATTC Convention Area. This proposed rule is necessary for the United States to satisfy its obligations as a member of the IATTC.

**DATES:** Comments on the proposed rule and supporting documents must be submitted in writing by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2016-0106, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0106>, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Rachael Wadsworth, NMFS West Coast Region Long Beach Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier “NOAA-NMFS-2016-0106” in the comments.

*Instructions:* Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS

will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of the draft Regulatory Impact Review and other supporting documents are available via the Federal eRulemaking Portal: <http://www.regulations.gov>, docket NOAA-NMFS-2016-0106 or by contacting the Regional Administrator, William W. Stelle, Jr., NMFS West Coast Region, 7600 Sand Point Way, NE, Bldg 1, Seattle, WA 98115-0070, or [RegionalAdministrator.WCRHMS@noaa.gov](mailto:RegionalAdministrator.WCRHMS@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Rachael Wadsworth, NMFS, West Coast Region, 562-980-4036.

## **SUPPLEMENTARY INFORMATION:**

### **Background on the IATTC**

The United States is a member of the IATTC, which was established under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission. In 2003, the IATTC adopted the Convention for the Strengthening of the IATTC Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention). The Antigua Convention entered into force in 2010. The United States acceded to the Antigua Convention on February 24, 2016. The full text of the Antigua Convention is available at: [https://www.iattc.org/PDFFiles2/Antigua\\_Convention\\_Jun\\_2003.pdf](https://www.iattc.org/PDFFiles2/Antigua_Convention_Jun_2003.pdf).

The IATTC consists of 21 member nations and four cooperating non-member nations and facilitates scientific research into, as well as the conservation and management of, tuna and tuna-like species in the IATTC Convention Area. The IATTC Convention Area is defined as waters of the eastern Pacific Ocean (EPO) within the area bounded by the west coast of the Americas and by 50° N. latitude, 150° W. longitude, and 50° S. latitude. The IATTC maintains a scientific

research and fishery monitoring program and regularly assesses the status of tuna, sharks, and billfish stocks in the EPO to determine appropriate catch limits and other measures deemed necessary to promote sustainable fisheries and prevent the overexploitation of these stocks.

### **International Obligations of the United States under the Antigua Convention**

As a Party to the Antigua Convention and a member of the IATTC, the United States is legally bound to implement decisions of the IATTC. The Tuna Conventions Act (16 U.S.C. 951 *et seq.*) directs the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the U.S. Coast Guard, to promulgate such regulations as may be necessary to carry out the United States' obligations under the Antigua Convention, including recommendations and decisions adopted by the IATTC. The authority of the Secretary of Commerce to promulgate such regulations has been delegated to NMFS.

### **IATTC Resolution on FADs**

In 2013, the IATTC adopted Resolution C-13-04 (*Collection and Analyses of Data on Fish-Aggregating Devices*) in response to concerns that incomplete data was being collected on FADs and that the IATTC was unable to track the activities on a FAD through time in the Convention Area. The Commission recognized that additional information needed to be collected before Commission-wide FAD management measures could be developed. In order to fully implement Resolution C-13-04, the Commission also needed to adopt a FAD identification scheme. In 2014 and 2015, the IATTC scientific staff provided options and recommendations for a FAD identification scheme. In 2015, the Commission agreed on a method to identify FADs and adopted Resolution C-15-03, which amended Resolution C-13-04, and included this information. In 2016, the Commission further agreed on modifications to clarify the data collection requirements and revisions to some of the dates for implementing specific provisions in the

Resolution. The IATTC adopted Resolution C-16-01 by consensus in July 2016. The main objective of Resolution C-16-01 is to collect data on FADs in the EPO and to identify FADs through a marking system.

### **IATTC Resolution on Silky Sharks**

In 2016, the IATTC adopted Resolution C-16-06 in response to concerns for the stock status of the silky shark in the EPO. The IATTC scientific staff has provided conservation recommendations for the silky shark since 2012, and Resolution C-16-06 is consistent with the advice that the IATTC scientific staff provided in 2016. The main objective of Resolution C-16-06 is to restrict retention of silky sharks on purse seine vessels and to restrict incidental catch of silky sharks on longline vessels in the IATTC Convention Area. U.S. commercial fishing vessels in the EPO do not target silky shark; they are caught incidentally and primarily discarded.

### **Proposed Regulations**

This proposed rule would implement provisions of Resolutions C-16-01 and C-16-06, described above, for U.S. commercial fishing vessels that fish for tuna or tuna-like species in the IATTC Convention Area. This proposed rule includes four elements: two elements regarding FADs and two elements regarding silky shark.

The first element would require the owner or operator of a U.S. purse seine vessel to ensure characters of a unique code be marked indelibly on each fish aggregating device (FAD) deployed or modified on or after January 1, 2017. The vessel owner or operator would be required to select one of the following two options for the unique code for each FAD: (1) obtain a unique code from NMFS West Coast Region that NMFS has obtained from the IATTC Secretariat, as specified in Annex I of Resolution C-16-01 or (2) use an existing unique identifier associated with the FAD (e.g., the manufacturer identification code for the attached buoy).

The vessel owner or operator would be required to ensure the characters for the unique code be at least 5 centimeters in height on the upper portion of the attached radio or satellite buoy in a location that does not cover the solar cells used to power the equipment. For FADs without attached radio or satellite buoys, the characters would be required to be marked indelibly on the uppermost or emergent top portion of the FAD. In other words, the vessel owner or operator would be required to ensure the marking is durable and will not fade or be erased (e.g., marked using an epoxy-based paint or an equivalent in terms of lasting ability) and visible at all times during daylight. In circumstances where the observer is unable to view the unique code, the captain or crew would be required to assist the observer (*e.g.*, by providing the unique code of the FAD to the observer).

The second element would require the vessel owner or operator of a FAD that is deployed on or after January 1, 2017, to record and submit information about the FAD to the address specified by the Highly Migratory Species (HMS) Branch. The HMS Branch is defined as NMFS West Coast Region, Suite 4200, 501 W. Ocean Blvd., Long Beach CA 90802. In accordance with Annex I of Resolution C-16-01, nine data fields would be required to be recorded and submitted: (1) position; (2) date; (3) hour; (4) FAD unique identifier; (5) FAD type (*e.g.*, drifting natural FAD, drifting artificial FAD); (6) FAD design characteristics (dimension and material of the floating part and of the underwater hanging structure); (7) the type of activity (set, deployment, hauling, retrieving, loss, intervention on electronic equipment, other (if so, specify)); (8) if the activity is a set, the results of the set in terms of catch and bycatch; and (9) characteristics of any attached buoy or positioning equipment (positioning system, whether equipped with sonar, *etc.*). The IATTC Secretariat is currently working on further describing and defining each of these data fields through the development of a standard form. Owners and

operators of a FAD would be required to record this information on the standard form developed by the Secretariat and provided to the owners and operators by the HMS Branch.

The third element would prohibit the crew, operator, and owner of a commercial purse seine fishing vessel of the United States used to fish for tuna or tuna-like species from retaining on board, transshipping, storing, or landing any part or whole carcass of a silky shark that is caught in the Convention Area. U.S. purse seiners do not target silky sharks; they are caught incidentally and are primarily discarded. The impacts of these proposed regulations to purse seine vessels are described in the Classification section below.

The fourth element would require the crew, operator, and owner of a commercial longline fishing vessel of the United States to limit the retention of silky sharks caught in the IATTC Convention Area to a maximum of 20% by weight of the total catch of fish during any fishing trip that occurred in whole or in part in the IATTC Convention Area. Although Resolution C-16-06 provides that the “bycatch” of silky shark be restricted, NMFS proposes to use the term “retained catch” in these proposed regulations.

U.S. longline vessels fishing in the IATTC Convention Area do not target, and infrequently catch, silky shark. Data from 2008 to 2015 show that any incidentally caught silky shark are released, and almost all are released alive. Silky shark are commonly released by cutting the line or dehooking the shark before it is brought onboard the vessel. Weights for silky shark are not recorded and weight estimates for sharks released while still in the water would likely not be reliable. An evaluation of total catch per longline trip where silky shark have been caught and released shows that, if the average weights of silky sharks are approximated, the amount of silky shark caught by U.S. longline vessels fishing in the EPO would not come close to 20% by weight of the total catch of fish during a fishing trip. NMFS is proposing to use the

term “retained catch” in the proposed regulations to assist in enforcement of these regulations. The impacts of these proposed regulations to longline vessels are described in the Classification section below.

### **Classification**

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Tuna Conventions Act and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS is amending the supporting statement for the Pacific Tuna Fisheries Logbook Office of Management and Business (OMB) Paperwork Reduction Act (PRA) requirements (OMB Control No. 0648-0148) to include the data collection requirements for FADs as described in the preamble. NMFS estimates the public reporting burden for this collection of information to average 10 minutes per form, time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. NMFS requests any comments on the addition of the FAD data collection form to the PRA package, including whether the paperwork would unnecessarily burden any vessel owners and operators. Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send



comments on these or any other aspects of the collection of information to the ADDRESSES above, and by e-mail to *OIRA\_Submission@omb.eop.gov*, or fax to (202) 395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. All currently approved NOAA collections of information may be viewed at: [http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html).

Regarding the elements of the proposed rule pertaining to silky shark; there are no new collection-of-information requirements associated with this action that are subject to the PRA, and existing collection-of-information requirements still apply under the following Control Numbers: 0648-0593 and 0648-0214. Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid Office of Management and Budget control number.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared as required by section 603 of the Regulatory Flexibility Act to analyze whether the proposed rule to implement provisions of Resolutions C-16-01 and C-16-06 adopted by the IATTC in 2016 would have a significant economic impact on a substantial number of small entities. The IRFA is being published to aid the public in commenting upon NMFS conclusion that the proposed actions will not have a significant economic impact on a substantial number of small entities.

As described previously in the **SUPPLEMENTARY INFORMATION** section, the proposed regulations would require FAD identification and data reporting as well as fishing restrictions on silky sharks. Alternatively, the failure to promulgate the proposed action would

result in the provisions of these Resolutions not being implemented and would not allow the United States to satisfy its obligations as a member of the IATTC.

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry for all NMFS rules, subject to the RFA, published after July 1, 2016. Id. at 81194.

NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standard. All of the entities directly regulated by this regulatory action are commercial finfish fishing businesses. The new standard results in fewer commercial finfish businesses being considered small.

The entities that would be affected by the proposed action are (1) U.S. purse seine vessels that use FADs to fish for tuna or tuna-like species in the IATTC Convention Area, and (2) U.S. purse seine and longline vessels that catch silky shark.

As of July 2016, there are 15 large purse seine vessels (with at least 363 metric tons of fish hold volume) listed on the IATTC Regional Vessel Register. The number of U.S. large purse seine vessels on the IATTC Regional Vessel Register has increased substantially in the past two years due to negotiations regarding the South Pacific Tuna Treaty (SPTT) and the interest expressed by vessel owners that typically fish in the WCPO in relocating to the EPO. However,

parties reached agreement in principle on changes to the SPTT in June 2016. U.S. large purse seine vessels fishing in the EPO primarily land yellowfin, skipjack, and bigeye tuna. Estimates of ex-vessel revenues for large U.S. purse seine vessels fishing in the IATTC Convention Area from 2005 to 2014 have been confidential and may not be publicly disclosed because of the small number of vessels in the fishery. However, in 2015, thirteen large purse seine vessels fished either exclusively in the EPO or fished in both the EPO and WCPO, and so information for 2015 is not confidential.

For large purse seine vessels that fished exclusively in the EPO in 2015, ex-vessel price information specific to the individual vessels are not available to NMFS because these vessels did not land on the U.S. West Coast and the cannery receipts are not available through the IATTC. However, estimates for large purse seine vessels based in the WCPO that fish in both the EPO and WCPO may be used as a proxy for U.S. large purse seine vessels. The number of these U.S. purse seine vessels is approximated by the number with WCPFC Area Endorsements, which are the NMFS-issued authorizations required to use a vessel to fish commercially for HMS on the high seas in the Convention Area. As of August 2016 the number of purse seine vessels with WCPFC Area Endorsements was 42. Neither gross receipts nor ex-vessel price information specific to individual fishing vessels are available to NMFS, so NMFS applied indicative regional cannery prices—as approximations of ex-vessel prices—to annual catches of individual vessels to estimate their annual receipts. Indicative regional cannery prices are available through 2014 (developed by the Pacific Islands Forum Fisheries Agency; available at <https://www.ffa.int/node/425>), so NMFS estimated vessels' annual receipts during 2012-2014. Using this approach, NMFS estimates that among the affected vessels, the range in annual average receipts in 2012-2014 was \$3 million to \$20 million and the median was about \$13

million. Thus, NMFS estimates that slightly more than half of the affected large purse seine vessels are small entities. Purse seine vessels that use FADs to fish for tuna or tuna-like species and that catch silky shark in the IATTC Convention Area are all large vessels and are both large and small entities.

There are two components to the U.S. tuna purse seine fishery in the EPO: (1) large purse seine vessels with at least 363 metric tons of fish hold volume (size class 6 vessels) that typically have been based in the western and central Pacific Ocean (WCPO), and (2) coastal purse seine vessels with smaller fish hold volume that are based on the U.S. West Coast. Because only the large purse seine vessels fish with FADs and incidentally catch silky shark in the EPO, the proposed action is not expected to impact the coastal purse seine vessels. U.S. purse seiners do not target silky sharks in the EPO. Since 2005, the best available data from observers show that the incidental catches of silky shark are primarily discarded; however, a small percentage has been landed in the past ten years. For example, in 2015, a year in which more than three large purse seine vessels fished in the EPO, about 3% of the total catches of silky shark were landed and the rest were discarded either dead or alive. Since at least 2005, the observer coverage rate on class size 6 vessels in the EPO has been 100 percent.

As of August 2016, the IATTC Regional Vessel Register lists 158 U.S. longline vessels that have the option to fish in the IATTC Convention Area. The majority of these longline vessels possess Hawaii Longline Limited Access Permits (issued under 50 CFR 665.13). Under the Hawaii longline limited access program, no more than 164 permits may be issued. In addition, there are U.S. longline vessels based on the U.S. West Coast, some of which operate solely under the Pacific HMS permit. U.S. West Coast-based longline vessels operating under the Pacific HMS permit fish primarily in the EPO and are currently restricted to fishing with

deep-set longline gear outside of the U.S. West Coast EEZ. These vessels primarily target tuna species with a small percentage of swordfish and other highly migratory species taken incidentally.

There have been less than three West Coast-based vessels operating under the HMS permit since 2005; therefore, landings and ex-vessel revenue are confidential. However, the number of Hawaii-permitted longline vessels that have landed in West Coast ports has increased from one vessel in 2006 to 14 vessels in 2014. In 2014, 621 mt of highly migratory species were landed by Hawaii permitted longline vessels with an average ex-vessel revenue of approximately \$247,857 per vessel. For the longline fishery, the ex-vessel value of catches by the Hawaii longline fleet in 2012 was about \$87 million. With 129 active vessels in that year, per-vessel average revenues were about \$0.7 million, well below the \$11 million threshold for finfish harvesting businesses. NMFS considers all longline vessels, for which data is non-confidential, that catch silky sharks in the IATTC Convention Area to be small entities for the purposes of the RFA.

U.S. longline vessels fishing in the IATTC Convention Area, whether under the Hawaii Longline Limited Access Permit or the Pacific HMS permit, do not target silky shark and all those caught incidentally are released. From 2008 to 2015, logbook records recorded by vessel owners and operators of U.S. longline vessels fishing in the IATTC Convention Area showed a total of four silky sharks caught and released on four separate trips. During this same time period, observers did not record any catch of silky shark on longline vessels using shallow-set gear. The observer data for the Hawaii deep-set longline fishery showed a *de minimis* amount was occasionally caught and nearly all were released alive. Since at least 2008, the observer coverage rates on shallow-set and deep-set longline vessels in the EPO have been a minimum of

100 and 20 percent, respectfully. An evaluation of total catch per longline trip where silky shark have been caught and released shows that, if the average weights of silky sharks are approximated, the amount of silky shark caught by U.S. longline vessels fishing in the EPO do not come close to 20% by weight of the total catch of fish during a fishing trip.

NMFS considered a “No Action” alternative to the proposed action. Under the “No Action” alternative, the vessel owners and operators of large purse seine vessels would not mark FADs or collect data on FAD activities. In addition, large purse seine vessels would not need to release silky sharks caught in the EPO and there would be no restrictions on catch on longline vessels. Under this alternative, the United States would not implement Resolutions C-16-01 and C-16-06 and would not satisfy international obligations as a Party to the Antigua Convention.

Because the proposed action implements Resolutions C-16-01 and C-16-06 as agreed to by the United States, there are also not any possible additional alternatives that would be consistent with U.S obligations as a party to the Antigua Convention.

This IRFA was developed for this action using NMFS’ small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes (80 FR 81194, December 29, 2015). The \$11 million standard is used in place of the U.S. SBA current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry. NMFS has reviewed the analyses prepared for this action in light of the \$11 million standard. Under this size standard, the entities for which the proposed action on FADs applies are considered large and small business. However, disproportional economic effect between small and large businesses is not expected; there will be only minimal

additional time burden for owners and operators of large purse seine vessels to ensure characters of a unique code be marked indelibly on their FADs and to record data for FAD activities. And while the large purse seine vessels impacted by the proposed actions with respect to treatment of silky sharks would be required to release all silky sharks, U.S. purse seine vessels do not target silky sharks, and primarily release those caught incidentally. However, there may be some modifications to the fishing practices of these large and small entities to release all catch of silky sharks.

NMFS considers the longline vessels for which the proposed action on silky shark applies to be small entities and the large purse seine vessels to also be large and small entities. U.S. longline vessels fishing in the EPO do not target silky shark and release all those incidentally caught. U.S. longline vessels only occasionally catch a small amount of silky sharks on fishing trips in the EPO; therefore, this proposed action is not expected to impact the fishing practices of these longline vessels.

Thus, these proposed actions are not expected to substantially change the typical fishing practices of affected vessels. In addition, any impact to the income of U.S. vessels would be minor. Therefore, NMFS has determined that the proposed action is not expected to have a significant economic impact on a substantial number of small entities.

Management of commercial fisheries must comply with a number of international agreements, domestic laws, and Fisheries Management Plans. These include, but are not limited to, the Magnuson-Stevens Fishery Conservation and Management Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management

Act. NMFS strives to ensure consistency among the regulations with relevant agencies. The proposed rule would not conflict with any other statutes or regulations, Federal or otherwise.

**List of Subjects in 50 CFR Part 300**

Fish, Fisheries, Fishing, Fishing vessels, International organizations, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: September 27, 2016.

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

**Subpart C—Eastern Pacific Tuna Fisheries**

1. The authority citation for part 300, subpart C, continues to read as follows:

**Authority:** 16 U.S.C. 951 *et seq.*

2. In § 300.21, add the definition for “Highly Migratory Species (HMS) Branch” in alphabetical order to read as follows:

**§ 300.21 Definitions.**



\* \* \* \* \*

*Highly Migratory Species (HMS) Branch* means: National Marine Fisheries Service West Coast Region, Suite 4200, 501 W. Ocean Blvd., Long Beach CA 90802.

\* \* \* \* \*

3. In § 300.24, add paragraphs (ee) through (hh) to read as follows:

**§ 300.24 Prohibitions.**

\* \* \* \* \*

(ee) Fail to ensure characters of a unique code are marked indelibly on a FAD deployed or modified on or after January 1, 2017 in accordance with § 300.25 (h).

(ff) Fail to record and report data on interactions or activities on FADs as required in § 300.25 (i).

(gg) Use a commercial purse seine fishing vessel of the United States to retain on board, transship, store, or land any part or whole carcass of a silky shark (*Carcharhinus falciformis*) in contravention of § 300.27 (e).

(hh) Use a U.S. longline vessel to catch silky shark in contravention of § 300.27 (f).

4. In § 300.25, add paragraphs (h) and (i) to read as follows:

**§ 300.25 Eastern Pacific fisheries management.**

\* \* \* \* \*

(h) *FAD identification requirements for purse seine vessels.*

(1) For each FAD deployed or modified on or after January 1, 2017, in the IATTC Convention Area, the vessel owner or operator must either: obtain a unique code from HMS Branch; or use an existing unique identifier associated with the FAD (*e.g.*, the manufacturer identification code for the attached buoy).

(2) U.S. purse seine vessel owners and operators shall ensure the characters of the unique code or unique identifier be marked indelibly at least 5 centimeters in height on the upper portion of the attached radio or satellite buoy in a location that does not cover the solar cells used to power the equipment. For FADs without attached radio or satellite buoys, the characters shall be on the uppermost or emergent top portion of the FAD. The vessel owner or operator shall ensure the marking is visible at all times during daylight. In circumstances where the on-board observer is unable to view the code, the captain or crew shall assist the observer (*e.g.* by providing the FAD identification code to the observer).

(i) *FAD data reporting for purse seine vessels.* U.S. vessel owners and operators must ensure that any interaction or activity with a FAD is reported using a standard format provided by the HMS Branch. The owner and operator shall ensure that the form is submitted to the address specified by the HMS Branch.

5. In § 300.27 paragraphs (e) through (h) are redesignated as paragraph (g) through (j) and new paragraphs (e) and (f) are added to read as follows:

**§ 300.27 Incidental catch and tuna retention requirements.**

\* \* \* \* \*

(e) *Silky shark restrictions for purse seine vessels.* The crew, operator, and owner of a commercial purse seine fishing vessel of the United States used to fish for tuna or tuna-like species is prohibited from retaining on board, transshipping, storing, or landing any part or whole carcass of a silky shark (*Carcharhinus falciformis*) that is caught in the Convention Area.

(f) *Silky shark restrictions for longline vessels.* The crew, operator, and owner of a longline vessel of the United States used to fish for tuna or tuna-like species must limit the retained catch of silky sharks caught in the IATTC Convention Area to a maximum of 20 percent

in weight of the total catch during each fishing trip that occurs in whole or in part in the IATTC Convention Area.

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[FR Doc. 2016-24444 Filed: 10/7/2016 8:45 am; Publication Date: 10/11/2016]